

In re:  
BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,  
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,  
ASCOT FUND LTD., GABRIEL CAPITAL  
CORPORATION,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-1182 (SMB)

### **STIPULATION AND ORDER**

Plaintiff Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities (“BLMIS”) and the estate of Bernard L. Madoff, individually, and Defendants J. Ezra Merkin (“Merkin”), Gabriel Capital Corporation (“GCC”), Ascot Partners, L.P. (“Ascot Partners”), Ascot Fund Ltd. (“Ascot Fund”) (collectively, the “Defendants”), by and through their respective undersigned counsel (collectively, the “Parties”), state as follows:

**WHEREAS**, on May 7, 2009, the Trustee initiated this adversary proceeding in the United States Bankruptcy Court for the Southern District of New York against, *inter alia*, Defendants Merkin, GCC, Ascot Partners, Ascot Fund, and other defendants;

**WHEREAS**, on August 30, 2013, the Trustee filed his Third Amended Complaint against the Defendants (the “Complaint”), whereby the Trustee consented to the entry of final orders or judgment by the Bankruptcy Court; and

**WHEREAS**, on February 5, 2015, Defendants Merkin, GCC, and Ascot Fund answered the Complaint and demanded a jury trial; and

**WHEREAS**, on August 10, 2015, the Trustee filed a motion pursuant to 28 U.S.C. § 157(d), Federal Rule of Bankruptcy Procedure 5011(a), and Local Bankruptcy Rule 5011-1, to withdraw the reference to the United States Bankruptcy Court, currently pending before the Honorable Laura Taylor Swain, U.S.D.J.; and

**WHEREAS**, on August 24, 2015, Defendants filed their opposition to the motion to the Trustee's motion to withdraw the reference; and

**WHEREAS**, the Parties have agreed to consent to the Bankruptcy Court's entry of final orders and judgments in this proceeding and to waive any rights to a jury trial in this proceeding;

**NOW, THEREFORE**, the Parties agree and stipulate to the following:

1. The Bankruptcy Court has subject matter jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and (e)(1), and 15 U.S.C. § 78eee(b)(2)(A) and (b)(4).
2. The Parties expressly and knowingly grant their consent for the Bankruptcy Court to enter final orders and judgments on all claims in this adversary proceeding, whether such claims are core under 28 U.S.C. § 157(b)(2) or non-core under 28 U.S.C. § 157(c)(2), subject only to appellate review under 28 U.S.C. § 158(a) or (d). This consent cannot be withdrawn without the express agreement of all Parties.
3. Pursuant to Rule 39(a) of the Federal Rules of Civil Procedure, the Parties knowingly and intentionally waive their right to a jury trial and agree to a bench trial before the Bankruptcy Court. This waiver cannot be withdrawn without the express agreement of all Parties.

4. Upon entry of this stipulation, the Trustee will withdraw his motion to withdraw  
the reference before Judge Swain.

Dated: New York, New York  
September 1, 2015

s/David J. Sheehan

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Liquidation of Bernard L. Madoff  
Investment Securities LLC  
and the estate of Bernard L. Madoff*

s/Neil Steiner

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*Attorneys for Ralph C. Dawson, as  
Receiver for Defendant Ascot Partners, L.P.,  
and Ascot Fund Limited*

SO ORDERED this 2<sup>nd</sup> day of September 2015.

/s/ STUART M. BERNSTEIN  
HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE